



JUVENILE JUSTICE

The year 2000 marked the 100th Anniversary of the juvenile justice system as we know it today. Assume the newly appointed Attorney General has instituted a task force to evaluate the existing juvenile justice system. During this seminar, you will recommend changes to the law governing juveniles and participate in a mock trial and sentencing proceeding.

Questions to Consider

- What would you change about the way juveniles are treated by the juvenile justice system?
- Should juveniles ever be treated as adults for trial and sentencing purposes?
- What elements are critical to an effective juvenile justice system in the twenty-first century?

Introduction

Although Albuquerque's overall crime rate remains above average, juvenile *violent* crime has been consistently declining since 1994. Despite this statistic the media often portrays juveniles as getting involved in more serious offenses. The reality is that most youth offenders are arrested for nonviolent or status offenses.

Because of the perception that *violent* juvenile offenses are on the rise, many federal and state legislators continue to work on stricter juvenile crime laws aimed at sending more youth into adult court for trial and sentencing. Between 1992 and 1997, 44 states and the District of Columbia passed laws making it easier for juveniles to be tried as adults. Today juvenile offenders are more likely to undergo a formal processing by a juvenile court judge than offenders were seven years ago, and many legislators are focusing on punishment as the primary means to reform delinquent youth.

The question to consider is whether the current juvenile delinquency problems warrant a complete overhaul of the juvenile justice system. Should we insist that juveniles committing serious offenses be tried and punished as adults? Or, should youth offenses be handled in a system more focused on reform? In order to evaluate such questions and the alternatives that should be considered, a little history of how we got to where we are today may be helpful.

Statistics

- Serious crime in the United States went down for the eighth year in a row.
- In the early 1980s, 50% of homicides committed by juvenile involved firearms.
- In 1994, 82% of homicides committed by juvenile involved firearms.
- In 1999, Juveniles were involved in 16% of all crimes.
- In 1999, Juveniles were involved in 54% of all arson arrests, 35% of all motor vehicle theft arrests, and 25% of all robbery arrests.
- In 1997 juvenile courts disposed of more than 1.7 million delinquency cases.
 - 48% were property offenses (burglary, larceny-theft, motor vehicle theft, and vandalism).
 - 6% were considered serious violent offenses.

Definitions

- Violent offenses include murder, rape, robbery and aggravated assault.
- Nonviolent offenses include property offenses, theft and trespassing.
- A status offense is an offense that is illegal solely because of the age of the offender, such as truancy, breaking curfew, and running away from home.

The Creation of a Juvenile Court

Prior to 1900, at least ten children in the United States were executed for crimes they committed before their 14th birthdays. Until 1899, youth lacking proper parental care or engaging in illegal conduct were sent to reform schools instead of jails. The state legislatures and courts justified the reformatories, as they were known, on the grounds that the states had the authority and responsibility to exercise parental power over such children. While the reform schools were intended to separate youthful offenders from hardened criminals in the hope that the youngsters could be reformed and turned into useful citizens, the reality was that many children were placed in reform schools because they were living a life of poverty.

Because of the widespread abuse of youth in reform schools and the concern that some youth were essentially being imprisoned without the right of a trial, the tide changed and the first juvenile court emerged. The idea was to create an entirely separate system of courts for children who commit offenses that would constitute criminal conduct if committed by an adult. Proponents also wanted a better means of properly addressing the needs of neglected and abused children.

In 1899, the Illinois legislature passed the first law establishing a juvenile court to regulate the treatment and control of dependent, neglected and delinquent children under age 16. The court assumed the power to assign dependent, neglected and delinquent children to the appropriate institution, and the judge made such decisions with the aid of probation officers. The law required that any juvenile placed in an adult facility be kept separate from adults, and children under age 12 were prohibited from being detained in any jail. The law also required that juvenile court records be kept confidential.

Establishing Juvenile Courts

By 1909, ten states had authorized the creation of juvenile courts, and by 1925, all but two states had juvenile court laws. New Mexico first adopted a juvenile court statute in 1917. In general, children committing crimes were no longer considered “criminals,” and were now referred to as “delinquents.” The juvenile court was intended to be a non-adversarial system, and the use of prosecutors and defense attorneys was not considered appropriate. The judge had broad authority to assess the situation and wide discretion in determining the best course of action for each child. Some judges would host “snitching bees” with groups of young men. These were sessions where the youth would confess their misdeeds to the judge and the judge would in turn protect them from police harassment as long as the boys agreed to improve their behavior. As you can see, the judge played many roles, and none were subject to review by a higher judicial body.

Probation and Detention

In the earliest days of the juvenile court system, the preference of the judges was to institutionalize the fewest number of children. Most judges believed that it was better to place youthful offenders on probation, either in their own home or in a foster home. In these situations, the new courts were given the authority to appoint a person of “good character” to serve as a probation officer. In the beginning, most probation officers were volunteers and many were affiliated with religious organizations or particular ethnic groups. Similar to present day concerns, in 1902, judges were concerned with the disproportionate number of children from certain ethnic groups being brought before the juvenile court. A Chicago judge expressed concern over the number of Italian children coming before him as it was out of proportion to the total number of Italians living in Chicago at the time.

Evolution of Juvenile Courts

Despite the improvements in the way delinquents were treated, problems still existed in the new system. While most proponents of a separate system sought to ensure that youthful offenders were kept separate from adult criminals, many children continued to be incarcerated with adults prior to their hearings in juvenile court. The early system has been described as follows:

At the end of a corridor I came in front of a cage on the floor of which were two small boys engaged in gambling with two grown men. . . . I found that these boys had already been in jail more than 60 days and had learned to play poker from their older cell mates, a safe cracker and a horse thief, upon whom they had come to look as great heroes.

~ Judge Benjamin Barr Lindsey (1870-1943), as
quoted in *The Dangerous Life*, p. 49.

Some communities continued to house children in detention homes for indefinite periods of time while others continued to place children in county jails, despite laws forbidding such action.

Another problem with the new system was with the volunteer probation officers. The volunteers often did not properly or consistently mentor the youth and failed to enforce the judges' court orders. These concerns led to the formalization of the probation system and the hiring of social workers with special expertise in addressing a wide range of children and family issues. This emphasis on understanding all of the social forces which led to delinquent behavior resulted in the founding of the first school for the professional training of social workers, the New York School of Philanthropy. However, one problem remained: the probation officers were servants of the court, not defenders of the children's rights.

Rights of Children and Parents

As the juvenile court evolved, many became critical of the probation system and lack of protection for children's rights. Some lawyers and judges argued that the juvenile courts were unconstitutional because children were being prosecuted for crimes but were not given the due process required in the Bill of Rights. The rights they were most concerned about are contained in the 5th and 6th Amendments to the Constitution:

5th Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . . ; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6th Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

In 1967, the Supreme Court decided that juveniles were protected under the 14th Amendment and entitled to due process, including the right to call and cross-examine witnesses, the right against self-incrimination, and the right to legal counsel. Many other constitutional rights were extended to juveniles over the subsequent decade.

As for parental responsibility, parental delinquency laws were not uncommon in the first decade of the twentieth century. For example, in 1907, Kansas law provided that parents could be "fined in a sum not to exceed \$1000, or imprisoned in the county jail for a period not to exceed one year, or . . . both" if they contributed to or encouraged the delinquent behavior of their children.

Children in Adult Courts

Interestingly, even after the creation of a separate court system for juveniles, the early juvenile court continued to concentrate only on what it considered “salvageable offenders,” leaving the most difficult children to the traditional adult criminal system. Today, the approach is similar, with the trend towards the enactment of stricter laws for juvenile offenses and the authorized transfer of more juveniles to the adult criminal court system for trial.

Today’s Juvenile Court

While many changes have been made to the juvenile courts since 1899, judges in the juvenile courts have retained broad jurisdiction over problems involving children and their families. Today’s juvenile courts continue to operate on the premise that youth are developmentally different from adults, and therefore should be more amenable to intervention techniques and treatment for problems that lead to illegal behavior. Also, the goal for many courts is to involve the entire family in the treatment of the youth. A judge’s assessment of a juvenile delinquent may now rely on information provided by mental health and substance abuse professionals, social workers, health officials, school officials, and of course, probation officers.

In addition, specialty courts are cropping up to address specific problems that lead to juvenile delinquency, such as alcohol and substance abuse. Many drug offenders that also have a drug addiction are now referred to a Juvenile Drug Court, where available. Other communities have turned over authority for status offenses and minor offenses to Teen Courts or Youth Courts, where the youth offender’s peers determine the proper punishment for the teen standing before them. These special courts often concentrate on the family unit and look to the family to aid in the rehabilitation of the youth.

Looking Toward the Future

- Should we continue to have two separate court systems: one for juveniles and one for adults?
- If separate systems are preferable to you, what components should be included in a juvenile justice system (i.e., probation, separate detention from adults, limited incarceration, drug treatment)? What should be the goal of the system?
- To what extent should parents be held accountable for the behavior of their children? To what extent should parents be required to participate in the juvenile court system?
- What circumstances, if any, warrant the transfer of a juvenile to the adult criminal system for trial and sentencing? Should there be any minimum age established where it is inappropriate to try a child as an adult?

The field of the juvenile court is the maladjusted child, whom the State is in duty bound to protect, correct, and develop; and the duty of this tribunal is to follow up the case by ascertaining all the facts and circumstances in the life of the child, to determine in what particulars that child has been deprived of essentials for a full moral and physical development. And if, as is common experience, it is found that certain essentials are lacking in the environment in which the child is being reared, the State, in loco parentis, acting through its instrumentality, the juvenile court, must provide the essentials of which the child has thus far been deprived.

Judge Edward Shoen of Newark, New Jersey, U.S.
Children's Bureau, *Proceedings of the Conference on
Juvenile Court Standards*, Publication 97 (Washington,
D.C.: Government Printing Office, 1922), pp. 35-36.